UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte JOHN EZELL, NEIL GILMARTIN, and STEPHEN
FITZPATRICK

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Appeal 2009-005292
Application 10/696,914
Technology Center 2100

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Before: LANCE LEONARD BARRY, JEAN R. HOMERE, and DEBRA
K. STEPHENS, *Administrative Patent Judges.*

BARRY, *Administrative Patent Judge.*

DECISION ON APPEAL[1]

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STATEMENT OF THE CASE

The Patent Examiner rejected claims 1-12. The Appellants appeal therefrom under 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C. § 6(b).

INVENTION

The Appellants describe the invention as "a system and method for performing data synchronization in a networked system that reduces the amount of information transmitted between the primary and secondary computer servers." (Spec. 2.)

ILLUSTRATIVE CLAIM

1. A method for synchronizing data in first and second computer servers, the first computer server including a first plurality of data sets each having a first identifier and a first set of attributes, and the second computer server including a second plurality of data sets each having a second identifier and a second set of attributes, the method comprising:

modifying an attribute of one of the first plurality of data sets and setting a checksum associated with one of the first plurality of data sets to a predetermined value;

accessing one of the first plurality of data sets having a checksum set to the predetermined value and formatting at least one attribute associated with the one of the first plurality of data sets to a predetermined format type;

transmitting a second identifier and a second checksum value both associated with one of the second plurality of data sets to the first computer server;

accessing one of the first plurality of data sets having a
first identifier corresponding to the transmitted second identifier
to determine a first checksum value associated with the
accessed data set; and,

when the first checksum value is not equal to the
transmitted second checksum value, transmitting the one of the
first plurality of data sets from the first computer server to the
second computer server to replace a second set of attributes of
the one of the second plurality of data sets with the first set of
attributes of the one of the first plurality of data sets.

REJECTIONS

Claims 1-4, 6-10, and 12 stand rejected under 35 U.S.C. § 102(b) as
being anticipated by U.S. Patent No. 5,974,563 ("Beeler").

Claims 5 and 11 stand rejected under 35 U.S.C. § 103(a) as being
unpatentable over Beeler and U.S. Patent No. 5,999,937 ("Ellard").

ISSUE

The *issue* before us is whether the Examiner erred in finding that
Beeler discloses setting a checksum, which is associated with one of a
plurality of data sets, to a predetermined value as required by independent
claims 1 and 7.

FINDINGS OF FACT

Beeler describes its invention as "an apparatus and method providing
real-time back-up of data changes occurring in open or newly edited files."
(Col. 1, ll. 12-14.)

ANALYSIS

"Claims must be read in view of the specification, of which they are a part." *Markman v. Westview Instruments, Inc.,* 52 F.3d 967, 979 (Fed. Cir. 1995) (en banc) (citations omitted).

Here, the Examiner finds that "when reading the Appellant's claim limitations in light of the specification, 'setting a checksum to a predetermined value' can be <u>reasonably interpreted</u> as calculating a checksum using attribute data." (Ans. 9.) The Appellants argue that "[e]mbodiments of the invention detect when an attribute is modified and identify that data element by setting a checksum to a predetermined value such as zero (see paragraph [0024])." (Appeal Br. 4.)

Paragraph 24 of the Appellants' Specification explains that "at step 66, computer server 12 sets a checksum value associated with the modified data set equal to zero. For example, computer server 12 can set the (checksum1) value of entity identifier (E1) of block 42 equal to zero." Reading independent claims 1 and 7 in view of the specification, the limitations require setting a checksum, which is associated with one of a plurality of data sets, to a predetermined value.

"It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim, and that anticipation is a fact question . . . ." *In re King,* 801 F.2d 1324, 1326 (Fed. Cir. 1986) (citing *Lindemann Maschinenfabrik GMBH v. Am. Hoist & Derrick Co.,* 730 F.2d 1452, 1457 (Fed. Cir. 1984)).

Here, we agree with the Examiner column 19, lines 14-15, of Beeler teaches "specifically that the checksum values are calculated using the 'block size.'" (Ans. 9.) We also agree with the Appellants, however, that "[t]here

is no setting a checksum to a predetermined value in Beeler." (Appeal Br. 5.) More specifically, the reference's calculating of a checksum using the size of a block does not constitute setting the checksum to a predetermined value.

The absence of setting a checksum to a predetermined value negates anticipation. The Examiner does not allege, let alone show, that the addition of Ellard cures the aforementioned deficiency of Beeler. Therefore, we *conclude* that the Examiner erred in finding that Beeler discloses setting a checksum, which is associated with one of a plurality of data sets, to a predetermined value as required by independent claims 1 and 7.

DECISION

We reverse the rejection of claims 1 and 7 and those of claims 2-6 and 8-12, which depend therewith.

REVERSED

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